

AN ORDINANCE BY

COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE

AN ORDINANCE TO AMEND CHAPTER 38 OF PART 2 OF THE ATLANTA CITY CODE TO PROVIDE FOR CEMETERY OR BURIAL GROUND DISTURBANCE PERMITS; TO AMEND SECTION 6-4043 OF THE LAND DEVELOPMENT CODE TO AUTHORIZE THE URBAN DESIGN COMMISSION TO REVIEW AND MAKE RECOMMENDATIONS ON CEMETERY OR BURIAL GROUND DISTURBANCE PERMITS AND FOR OTHER PURPOSES.

WHEREAS, O.C.G.A. §36-72-1 (a) provides that “the care accorded the remains of deceased persons reflects respect and regard for human dignity as well as cultural, spiritual, and religious values.”; and

WHEREAS, O.C.G.A § 36-72-1 (b) provides that “the General Assembly has declared that human remains and burial objects are not property to be owned by the person or entity which owns the land or water where the human remains and burial objects are interred or discovered, but human remains and burial objects are a part of the finite, irreplaceable, and nonrenewable cultural heritage of the people of Georgia which should be protected.”; and

WHEREAS, O.C.G.A. §36-72-1 et seq. provides that “no known cemetery, burial ground, human remains, or burial object shall be knowingly disturbed by the owner or occupier of the land on which cemetery or burial ground is located for the purposes of developing or changing the use of any part of such land unless a permit is first obtained from the governing authority of the municipal corporation or county wherein the cemetery or burial ground is located.”; and

WHEREAS, the City of Atlanta needs to make available a process in accordance with O.C.G.A. §36-72-1 et seq. by which an interested party may apply for a permit to be allowed to move human remains and burial objects.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS as follows:

Section 1. Chapter 38 of Part 2 of the Atlanta City Code, City of Atlanta, Georgia is hereby amended by adding an **Article III** titled **Cemetery or Burial Ground Disturbance Permit** to read as follows:

Article III. Cemetery or Burial Ground Disturbance Permit

38-60. Intent

The Urban Design Commission (UDC) shall have the power to hear, grant or deny applications for a cemetery or burial ground, as defined in paragraphs (3) and (5) of O.C.G.A. Section 36-72-2, as amended, disturbance permit in accordance with the powers delegated to the City by O.C.G.A. §36-72-1 et seq. as amended.

38-61. Procedures

Applications shall be filed with the Director, Urban Design Commission or their designee and shall include any supporting material as required by the rules of the Commission or this Section. Upon receipt of a complete application and the supporting material the UDC shall place the application on a regularly scheduled meeting agenda for public hearing, cause due notice of the time and place thereof to be published and give notice to surrounding property owners and descendants of those located in the cemetery or burial ground subject to the application. UDC staff shall review the information submitted and submit a findings of fact and recommendation to the Urban Design Commission for their review and recommendation.

38-62. Application

Application for a permit shall include, at a minimum, the following information:

- (a) Evidence of ownership of the land on which the cemetery or burial ground is located in the form of a legal opinion based upon a title search;
- (b) A report prepared by an archeologist as defined in paragraph (2) of O.C.G.A. Section 36-72-2, as amended, stating the number of graves believed to be present and their locations as can be determined from the use of minimally invasive investigation techniques, including remote sensing methods and the use of metal probes, which activities shall not require a permit;
- (c) A survey prepared by or under the direction of a registered surveyor showing the location and boundaries of the cemetery or burial ground based on an archeologist's report;
- (d) A plan prepared by a genealogist as defined in paragraph (7) of O.C.G.A. Section 36-72-2, as amended, for identifying and notifying the descendants of those buried or believed to be buried in such cemetery. If those buried or believed to be buried are of aboriginal or American Indian descent, the genealogist, in preparing the notification plan, shall consult with the Council on American Indian Concerns created pursuant to O.C.G.A. Section 44-12-280, as amended, and shall include in the notification plan not only any known descendants of those presumed buried but also any American Indian tribes as defined in paragraph (2) of O.C.G.A. Section 44-12-260, as amended, that are culturally affiliated; and
- (e) A proposal for mitigation or avoidance of the effects of the planned activity on the cemetery or burial ground. If the proposal includes relocation of any human remains or burial objects, the proposal shall specify the method of disinterment,

the location and method of disposition of the remains, the approximate cost of the process, and the approximate number of graves affected.

38-63. Identification and notification of descendants

The applicant shall implement its plan for identifying and locating descendants no later than the date the application is submitted to the Director, Urban Design Commission. The UDC staff shall review the applicant's plan for identifying and notifying the descendants of the deceased persons and may require as a condition for issuing a permit that the applicant implement additional reasonable attempts to identify and locate descendants. Notice to possible descendants shall include information on how to contact the City and a summary of the rights of descendants under this chapter. The UDC shall promptly inform any descendant who indicates an interest in the disposition of the human remains and burial objects regarding any proposals for mitigation, the terms of any permit issued, the time and place of any scheduled public hearings, and appeal procedures and events.

38-64. Public hearing; decision of City Council

(a) The commission shall conduct the public hearing within 60 days of the filing of an application and shall make a written recommendation to the City Council no later than 15 days following the public hearing with respect to the sufficiency of the notice to descendants, the plan for mitigation, the disturbance and adverse effects on the cemetery or burial ground, the survey of the cemetery, and plans for disinterment and reinterment. The applicant shall be required to post the nearest public road and the burial ground not less than 30 days prior to the both public hearing to be conducted by the UDC and the hearing before City Council.

(b) Within 15 days following receipt of the recommendations of the UDC, the City Council shall schedule a second public hearing at which any interested party or citizen may appear and be given an opportunity to be heard. In addition to the notice required in section 38-63, notice of the public hearing shall be advertised in the legal organ of the jurisdiction once a week for the two consecutive weeks immediately preceding the week in which any such hearing is held.

(c) Within 30 days after the conclusion of the public hearing, the City Council shall notify the applicant in writing of its decision. The City Council shall have the authority to deny the application with written reasons therefore, to issue a permit adopting the application in whole or in part, or to issue a permit which may include additional requirements to mitigate the proposed activity's adverse effects on the cemetery or burial ground, including but not limited to relocation of the proposed project, preservation of the cemetery or burial ground as an undeveloped area within the proposed development or use of land, and respectful disinterment and proper disposition of the

human remains. The City may adopt the applicant's proposal for mitigation.

(d) Findings Required: The City Council shall consider the following in making its findings:

- (1) The presumption in favor of leaving the cemetery or burial ground undisturbed;
- (2) The concerns and comments of any descendants of those buried in the burial ground or cemetery and any other interested parties;
- (3) The economic and other costs of mitigation;
- (4) The adequacy of the applicant's plans for disinterment and proper disposition of any human remains or burial objects;
- (5) The balancing of the applicant's interest in disinterment with the public's and any descendant's interest in the value of the undisturbed cultural and natural environment; and
- (6) Any other compelling factors which the City Council deems relevant.

38-65. Application fee

The City Council shall be authorized to impose an application fee which shall reflect the cost to the City for processing and reviewing the application including, but not limited to, the cost of hiring an attorney, independent archeologist, publication of notices and independent surveyor to assist in making recommendations regarding the applicant's plan. Such fee, if imposed, shall not exceed \$2,500.00.

38-66. Appeals

Should any applicant or descendant be dissatisfied with a decision of the City Council, he or she, within 30 days of such decision, may file an appeal in the superior court of Fulton County by filing with the clerk of said court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within 30 days after the decision of City Council is rendered.

(a) Activities during time for appeal and after filing of appeal: Until the expiration of the time for appeal as set forth in section, the applicant shall not begin or resume activities which comply with the permit issued by the City. If an appeal is filed, the applicant may begin or resume activities which comply with the permit only upon consent of the City and the party seeking judicial review or upon order of the reviewing court for good cause shown.

38-67. Inspections

The Department of Police shall inspect as necessary to determine whether the applicant has complied with the provisions of this chapter requiring cessation or limitation of activity and with the terms of the permit as issued by the City Council or as modified by the superior court or reviewing court.

38-68. Disinterment and disposition of human remains

Any disinterment and disposition of human remains or burial objects permitted under this chapter shall be supervised, monitored, or carried out by the applicant's

archeologist and shall be done at the expense of the person or entity to whom the permit is issued.

38-69. Violations

Any person convicted of violating this chapter shall be punished as prescribed in Section 1-8 of the Atlanta City Code.

Section 2. That Section 6-4043(e) of the Land Development Code is hereby amended by adding a subsection (10) to read as follows:

(10)The commission shall hold public hearing and make recommendations to the City Council for the issuance of permits to move or disturb cemeteries or graveyards in accordance with the procedures set forth in Chapter 38 of Part 2 of the Atlanta City Code as amended.

Section 3. That the provisions of this article shall not apply to any cemetery owned by the City of Atlanta, including but not limited to, Oakland Cemetery.

Section 4. That all ordinances or parts of ordinances in conflict with this ordinance shall be waived to the extent of the conflict.

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Legislative Counsel (Signature):

Contact

Number: 6946

Originating Department: Urban Design Commission

Committee(s) of Purview: Community Development/Human Resources Committee

Council

Deadline: 5/15/06

Committee Meeting Date(s): 5/30 -5/31 Full Council Date: 6/5/06

Commissioner Signature

CAPTION

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FINANCIAL IMPACT (if any): Legislation authorizes City Council to impose an application fee to reflect the cost to the City for processing and reviewing the application.

Mayor's Staff Only

Received by Mayor's Office:

5/14/06
(date)

Reviewed by:

(date)

Submitted to Council:

5/19/06
(date)